IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 25 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAMNIBEN SHUKLA OZARIYA & 1 - Appellant(s)
Versus
ABDUL USMAN SHAIKH & 3 - Defendant(s)

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Appearance :
MR CHETAN K PANDYA for Appellant(s) : 1 - 2.
None for Defendant(s) : 1 - 4.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 18/08/2006

ORAL JUDGMENT

1. In the Court of Civil Judge (Junior Division), Umargaon, Regular Civil Suit No. 16 of 1995 was filed, which resulted in compromise. The plaintiffs, after realizing that the compromise

was bad and could not be arrived at, filed yet another Regular Civil Suit No. 117/96 in the very same court, seeking declaration that the said compromise be set aside and a decree be granted in favour of the plaintiffs. The matter was contested on all counts by the defendants. After recording evidence and hearing the parties, the trial court decreed the suit, but the appellate court, on reappraisal of the evidence, observed that the trial court was unjustified in decreeing the suit. Being aggrieved by the said judgment and decree, the appellants-plaintiffs are before this Court under Section 100 of the Code of Civil Procedure.

2. Learned counsel for the appellant vehemently contended that the first appellate court was unjustified in reversing the decree granted by the trial court.

3. In the matter of **Pushpa Devi Bhagat Vs. Rajinder Singh & Ors., reported in [2006] 5 Supreme Court Cases 566,** the Supreme Court was required to interpret Rule 3 of Order 23. After discussing

the entire legal position, the Supreme Court observed that no independent suit can be filed for setting aside a compromise decree on the ground that the compromise was not lawful in view of the bar contained in Rule 3A. The Supreme Court also observed that a consent decree operates as estoppal and is valid and binding unless it is set aside by the court which passed the consent decree, by an order on an application under the Proviso to Rule 3 of Order 23.

4. The Supreme Court also observed that against a compromise decree in view of express bar contained in Section 96[3] of the Code of Civil Procedure, Regular First Appeal would also be not maintainable. However, the Apex Court observed that the remedy available to such dissatisfied person would be to make an application before the very same Court for recall of the decree.

5. In view of the authoritative and binding precedent of the Supreme Court, it is to be held that the suit of the plaintiffs is not

maintainable as it proposes to challenge the compromise/consent decree in an independent/separate suit. The suit, on the short ground, deserves to and is dismissed and consequently, the appeal is also dismissed. Notice is discharged. No costs. However, the Appellants-plaintiffs shall be entitled to approach the concerned court in accordance with law in view of the observations made by the Apex Court in the above-referred judgment.

6. In view of the dismissal of the appeal, Civil Application stands disposed of. Notice is discharged. Interim relief, if any, stands vacated.

[R.S. GARG, J.]

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